HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No.16156 of 2005

Dated: 23rd September, 2005

Between:

V.Baburao S/o.Veeraswamy, Govt. Employee,

R/o.Kaza Village, Muvva Mandal, Krishna District,

Presently residing at Plot No.14,3, Vittalnagaqr, Chinnathokatta, New Bowenpally, Secunderabad and another.

..... PETITIONERS

AND

1. The District Collector, Krishna, at Machilipatnam

and others.

.....RESPONDENTS

HONOURABLE SRI JUSTICE B.SESHASAYANA REDDY

Writ Petition No. 16156 of 2005

ORDER:

This writ petition has been filed by the petitioners viz., V.Baburao and Smt. R.Laxmi Kumari with a prayer to issue a writ or direction preferably writ of Mandamus declaring the notice dated 02.06.2005 issued by the Land Acquisition Officer/Revenue Divisional officer, Bandar, Krishna District-2nd respondent under Sections 9(1), 9(3) and 10 of the Land Acquisition Act, 1894, (for short, 'the Act') as illegal, arbitrary and violative of principles of natural justice and consequently declare that the entire land acquisition proceedings including notification issued under Section 4(1) dated 01.09.1994 in respect of the land i.e. Ac.1.70 cents in Sy.No.904/1 are unenforceable.

2. The petitioners are absolute owners of land admeasuring Ac.3.00 cents in Survey Nos.904/1 and 904/2 situated at Kaza village, Muvva Mandal, Krishna District. The first petitioner executed four registered gift deeds in favour of the second petitioner towards '*Pasupukumkuma'* on 01.05.1995 and 02.05.1996 in respect of the said land. The District Collector, Krishna District, at Machilipatnam-1st respondent issued Notification under Section 4(1) of the Act, dated 01.09.1994, for acquisition of part of the land i.e. an extent of Ac.1.70 cents out of Ac.3.00 cents. The petitioners filed W.P.No.21306 of 1994 questioning the said notification. The said writ petition ended in dismissal on 06.12.1994. After enquiry under Section 5-A of the Act, the petitioner again filed W.P.No.19873 of 1995 and the said writ petition ended in dismissal on 10.07.2000 directing the authorities to complete the land acquisition proceedings by passing an award expeditiously by giving opportunity to the petitioners. After lapse of four years, the Land Acquisition Officer/Revenue Divisional Officer, Bandar, Krishna District-2nd respondent issued notice under Sections 9(1), 9(3) and 10 of the Act calling for objections. The petitioners filed their objections on 20.06.2005, but no orders have been passed. Hence, the writ petition to declare the notice issued under Sections 9(1), 9(3) and 10 of the Act as illegal, arbitrary and violative of principles of natural justice.

3. The respondents filed counter affidavit. It is stated in the counter affidavit that the Land Acquisition Officer has prepared a draft award on 18.07.2005 and submitted to the District Collector, Krishna District, for approval. The District Collector, Krishna District has approved the draft award vide Ref.No.Rc.G4/724/2004 dated 01.08.2005. Relevant portion in para.6 of the counter affidavit needs to be noted and it is thus:

> "The Mandal Revenue Officer, Muvva, has reported that the first petitioner herein viz., Sri V.Babu Rao, is the original owner of the land and at the time of publication of Draft Notification and Draft Declaration, he is a Government employee in Medical and Health Department and he is presently working at Hyderabad and Smt.R.Lakshmi Kumari, the 2nd petitioner herein, is a permanent resident of Visakhapatnam and she is staying there along with her husband, who is an Engineer and she is not residing in the village, where the lands are situated. At the time of initiation of Land Acquisition proposals in the year 1994, the first petitioner herein viz., V.Babu Rao is having Ac.7.00 of land. He approached this Hon'ble Court at different stages of Land Acquisition Proceedings and obtained stay of all further proceedings. During the

pendency of the Writ Petitions, he sold away the property to third parties and gifted an extent of Ac.3.00 to his daughter in the year 1995, whereas fresh Land Acquisition Proceedings were initiated in the year 1994. Therefore, after considering the objections raised by the 2nd petitioner, the Revenue Divisional Officer, Bandar, has prepared the draft Award on 18.07.2005 and submitted to the District Collector, Krishna for approval. The Collector, Krishna, has approved the Draft Award for Rs.1,07,100/- vide his Ref.No.Rc.G4/724/2004 dated 1-8-2005. The Land Acquisition Officer and Revenue Divisional Officer, Bandar, has passed Award No.3/2005 dated 5-8-2005. After passing Award, the Land Acquisition Officer has also issued notices under Section 12(2) of Land Acquisition Act to the land owners duly informing them to receive the compensation of Rs.1,07,100/- for the lands acquired from them vide Rc.A.1399/2004 dated 19.8.2005."

4. Heard learned counsel appearing for the petitioners and learned Government Pleader for Land Acquisition appearing for the respondents.

5. Learned counsel appearing for the petitioners submits that the Award enquiry is required to be completed within two years under Section 11-A of the Act and since the Award enquiry is not completed within the period stipulated under the said Section, the Award passed by the 2nd respondent is illegal and therefore, the same is required to be set aside. In support of his submission, he placed reliance on the decision of our High Court in ***Madhava Rao Gandhe and others v. Land Acquisition Officer, Quili Qutubshah Urban Development Authority, Hyderabad***.

6. Learned Government Pleader for Land Acquisition appearing for the respondents submits that since Award has been passed, the writ petition has become infructuous, therefore, the same is liable to be dismissed *in lemini*.

7. Section 11-A of the Act reads as follows:

"**11-A. Period within which an award shall be made**:-- The Collector shall make an award under Section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse:

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment) Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation:-- In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded)."

8. Admittedly, W.P.No.19873 of 1995 filed by the petitioners ended in dismissal on 10.07.2000. A specific direction was given to the authorities in the said writ petition to expedite the award enquiry. The period allowed under Section 11-A of the Act for passing award is two years from the date of the publication of the declaration. If no award is made within that period, the entire proceedings for the acquisition of the land shall lapse. It is also to be noted that the amount has not been deposited by the Land Acquisition Officer while passing the Award. In the cited decision, it has been held as follows:

"The requirement under Section 11-A of the Act is a mandatory one and not a directory and there is no meaning in passing an Award without there being money readily available with the Land Acquisition Officer for disbursement. If the money is not at the disposal of the Land Acquisition Officer at the time of passing of the Award, even if the Award is passed, it is only a paper Award and such a technical satisfaction under Section 11-A of the Act is not contemplated. Section 11-A of the Act substantively requires not only passing of the Award within two years, but also keeping the amount awarded ready with the Land Acquisition Officer at the time of passing of the Award for the purpose of disbursement or deposit under Section 30 of the Act. In the instant case, it is clear from the counter-affidavit that even as on this date, the Land Acquisition Officer is not ready with the compensation awarded and he is awaiting sanction from the Government for the awarded amount. In the circumstances, the mandatory requirement under Section 11-A of the Act operated and the notification issued under Section 4(1) of the Act stood extinguished. As an inevitable corollary, the impugned Award dated 7.4.1994 became *non est* under law."

The issue involved in the case on hand is squarely covered by the above referred decision. The Land Acquisition Officer has not made the amount ready for being paid to the petitioners while passing the award. The award itself came to be passed after about five years of the conclusion of the proceedings in W.P.No.19873 of 1995. Since the award is not passed within the period as contemplated under Section 11-A of the Act, the notice issued under Sections 9(1), 9(3) and 10 of the Act is liable to be set aside. It goes without saying that the Award passed by the Land Acquisition Officer-2nd respondent also stands set aside.

9. Accordingly, the writ petition is allowed. No costs.

B.SESHASAYANA REDDY, J.

Dated: 23rd September, 2005.

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